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No. 22] NEW DELHI, NOVEMBER 4—NOVEMBER 10, 2012, SATURDAY/KARTIKA 13—KARTIKA 19, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 9 नवम्बर, 2012

आ.अ. 40.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, झारखंड राज्य से राज्य सभा के सदस्यों के रूप में श्री प्रदीप बालमूचू एवं श्री संजीव कुमार के निर्वाचन को प्रश्नगत करते हुए श्री निर्भय कुमार शाहाबादी द्वारा दाखिल की गई 2012 की निर्वाचन याचिका संख्या 1 में रांची स्थित झारखंड उच्च न्यायालय के दिनांक 1 अगस्त, 2012 के आदेश को, एतद्वारा प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/रा.स.-जे.के.डी./1 ऑफ 2012/2012]

आदेश से,
के. एन. भार, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 9th November, 2012

O. N. 40.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Jharkhand at Ranchi dated 1st August, 2012 in Election Petition No. 1 of 2012 filed by Shri Nirbhay Kumar Shahabadi calling in question the election of Shri Pradeep Balmuchu and Shri Sanjeev Kumar as the Members of the Council of States from the State of Jharkhand.

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Election Petition No. 1 of 2012

NIRBHAY KUMAR SHAHABADI Petitioner

Versus

1. Sri Pradeep Balmuchu

2. Sanjeev Kumar

3. Surendrajeet Singh Ahluwalia Respondents

CORAM: HON'BLE MR. JUSTICE ALOK SINGH

For the Petitioner : Mr. Anil Choudhary, Advocate

For the Respondents : None

C. A. V. On 20-07-2012 ... DELIVERED ON 1-8-2012

03. 01-08-2012 1. The petitioner, a sitting M.L.A. of the Jharkhand Legislative Assembly, has filed the present election petition under section 81 of the Representation of People Act, 1951 (for short "R.P. Act") assailing the election of respondent no.1- Sri Pradeep Balmuchu and respondent no. 2-Sri Sanjeev Kumar of Rajya Sabha held on 3-5-2012 on three grounds:--

- (i) Respondents No.1 and 2 have not submitted any document as required by Section 39(2)(c) of the R.P. Act to prove that their names are included in the electoral roll of any Parliamentary Constituency, therefore, their nomination papers ought to have been rejected by the Returning Officer.
- (ii) (a) Sri Pradeep Balmuchu-respondent no. 1 has filed his nomination on 23-4-2012 at 11 A.M. and he has subscribed the oath as the requirement of Article 84 read with 3rd Schedule of the Constitution of India at 11 A.M, itself.
(b) Respondent No. 2 Sri Sanjeev Kumar has filed his nomination paper on 23-4-2012 at 1.50 P.M., and he has subscribed the oath as per the requirement of Article 84 read with 3rd Schedule of the Constitution of India on the same day at the same time and same hour i.e. at 01.50 P.M. on 23-4-2012.
Therefore, it cannot be said that both the them have subscribed the oath after filing of the nomination paper, hence, their nomination papers ought to have been rejected.
- (iii) Respondent No. 2 has deposited the security deposit amount of Rs. 10,000 on 17-4-2012. He has filed his nomination paper after six days i.e. on 23-4-2012. The security deposit of Rs. 10,000 in cash should have been deposited with the Returning Officer at the time of filing his nomination paper in accordance with the provision of Section 34 of the R.P. Act. Therefore, security deposit of Rs. 10,000 in cash on 17-4-2012 was bad in law, hence nomination paper of respondent no. 2 ought to have been rejected.

2. In the last, it is pleaded that if nomination paper of either of the respondents no. 1 and 2 was rejected, respondent no. 3 would have been declared elected. Therefore, the election of respondents no. 1 and 2 be declared null and void on the ground that their nomination papers were wrongly accepted which, otherwise, ought to have been rejected. Further prayer was made to declare Sri Surendrajeet Singh Ahluwalia-respondent no. 3 as an elected candidate to the Rajya Sabha in the election held in May, 2012.

3. Mr. Anil Choudhary, learned counsel for the petitioner has vehemently argued that the election petition was presented by the petitioner in person before the Registrar General of this Court on 16-6-2012 within the statutory limitation period of 45 days from the date of declaration of result and the same is accompanied by four extra copies duly attested by

the petitioner under his signature; election petitioner has deposited a sum of Rs. 2000, therefore, the present petition is immune from any infirmity and defect and cannot be dismissed at initial stage on the ground of legal defects by invoking Section 86 of the R.P. Act and therefore, summons have to be issued to the respondents.

4. Mr. Choudhary further argued that the Hon'ble Apex Court in the case of Pashupati Nath Singh vs. Syed Mir Qasim (AIR 1968 Supreme Court 1064) and in the matter of Krishna Mohini (Ms) vs. Mohinder Nath Sofat [(2000) 1 Supreme Court Cases 145] has held that oath or affirmation has to be taken by the candidate after the submission of the nomination paper but before the date of scrutiny. Learned counsel submits that since the Returning Officer has noted the time of submission of the nomination paper as well as of oath or affirmation at 11 A.M. and 1.50 P.M. for respondents no. 1 and 2 respectively. Therefore, it can be inferred by this Court that oath or affirmation was not made after the submission of nomination papers. Mr. Choudhary has further argued that although both respondents no. 1 and 2 were the sitting M.L.A. at the time of filing the nomination papers, however, the Returning Officer failed to ask them to produce either a copy of electoral roll, or part of the electoral roll, in which their respective names were included to show that they were qualified to be chosen. Therefore, on this ground also, the nomination papers ought to have been rejected.

5. Mr. Choudhary has argued that respondent no. 2 has not deposited the security of Rs. 10,000 in cash with the Returning Officer at the time of filing of nomination paper as required under Section 34(2) of the R.P. Act, therefore, acceptance of nomination paper of respondent no. 2 was not legal. Mr. Choudhary in the last has vehemently argued that as per Section 100 (1) (d) (i) of the R.P. Act, improper acceptance of nomination paper would amount that the result of the election has been materially affected.

6. On being asked, Mr. Anil Choudhary, learned counsel for the petitioner, has fairly submitted that the provisions of the Code of Civil Procedure (for short "C.P.C.") as applicable to the trial of the suit, are applicable for trial of the election petition, subject to the provision of the R.P. Act and the Rules made thereunder in view of Section 87 of the R.P. Act.

7. Hon'ble Apex Court in Azhar Hussain vs. Rajiv Gandhi (AIR 1986 Supreme Court 1253) has observed as under:—

"The Code of Civil Procedure applies to the trial of an election petition by virtue of Section 87 of the Act. Since CPC is applicable, the court trying the election petition can act in exercise of the powers of the Code including Order 6 Rule 16 and Order 7 Rule 11 (a). Therefore, that Section 83 does not find a place in Section 86 of the Act which authorises dismissal of election petitions in certain contingencies does not mean that powers under the CPC cannot be exercised. An election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Civil P.C. and it is settled law that the omission of a single material fact would lead to an incomplete cause of action.

The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence and not at the threshold is thoroughly misconceived and untenable."

8. Hon'ble Apex Court in the case of Ram Sukh vs. Dinesh Aggarwal [(2009) 10 Supreme Court Cases 541] in paragraph 18 has held as under:—

"Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him."

9. The Hon'ble Apex Court in T. Arivandandam vs. T.V. Satya Pal and another (AIR 1977 Supreme Court 2421) has held as under:—

"The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases.

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The long arm of the law must throttle such litigative caricatures if the confidence and credibility of the community in the judicature is to survive.

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The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O VII Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing.”

10. Learned Single Judge of Rajasthan High Court in *Ranjeet Mal vs. Poonam Chand and another* (AIR 1983 Rajasthan 1) has held as under :—

“What is to be determined by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not, is to find out from the allegation of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation was sought to be initiated under the garb of ingenious drafting of the plaint and to guard against the mischief of a litigant misusing the process of the Court, by entering into a false litigation merely for the purpose of harassing the other party and obtaining undue advantage of the process of the Court by adopting tactics and in starting sham and shady actions.”

11. The Hon'ble Apex Court in the case of *Mohan Rawale vs. Damodar Tatyaba alias Dadasaheb and others* [(1994) 2 Supreme Court Cases 392] has observed as under :—

“A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered.”

12. The Hon'ble Apex Court in the case of *Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others* [(2004,) 3 Supreme Court Cases 137] has held as under :—

“The trial court can exercise the power under Order 7 Rule 11 C.P.C. at any stage of the suit, that is, before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.”

13. Having perused the judgments cited hereinabove, it is thus clear that election petition shall be tried in accordance with the provision of Code of Civil Procedure subject to the provisions of the RP Act. At the time, when the election petition is placed before the court, court must examine the pleadings to find out as to whether all the averments made in the petition disclose cause of action giving rise triable issue; OR as to whether a bogus, wholly vexatious or frivolous litigation is sought to be initiated under the garb of ingenious drafting and to guard against the mischief of litigant misusing the process of the Court, by entering into a false litigation merely for harassing the opposite party. If Court finds averments made do not constitute cause of action giving rise triable issue or litigation seems to be total bogus, vexatious or Frivolous, Court should reject the petition then and there instead of issuing summons to other party keeping in mind the wordings of the Apex Court in *T. Arivandandam* (Supra) nip it in the bud at the first hearing.

14. Keeping in mind the settled law, now I proceed to examine as to whether the averments made shall constitute cause of action giving rise triable issue.

15. On being asked specifically as to whether petitioner has ever filed any objection against the nomination papers of respondents no. 1 and 2 or has raised oral objection at the time of scrutiny of nomination under Section 36 of the R.P. Act?, Mr. Anil Choudhary, learned counsel for the petitioner, has fairly stated that no such objection was either submitted in writing nor raised. He, however, submits that non-raising of objection at the time of scrutiny shall not be fatal for the present petition,

16. Mr. Choudhary, learned counsel for the petitioner, on being asked as to whether respondents no. 1 and 2 are electoral of any parliamentary constituency, has not disputed this factual position. however, has argued that as per Section 39 (2) of the R.P. Act. Returning Officer was duty bound to direct them to place on record the requisite documents to prove that both of them are electoral of parliamentary constituency. Since, documents never filed along with the nomination paper and respondents no. 1 and 2 were not asked to file papers. Therefore, nominations ought to have been rejected. Section 39 (2) (c) of the R. P. Act reads as under:—

“39. Nomination of candidates at other elections.—(1) *****

(2) *** *** *** *** *** *** ***
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(c) at the time of presenting the nomination paper, the returning officer may require the person presenting the same to produce either a copy of the electoral roll, or part of the electoral roll, in which the name of the candidate is included as a certified copy of the relevant entries in such roll."

17. Careful reading of Sub-Section (c) of Section 39 (2) would suggest that returning officer may require the candidate to produce either of the documents to satisfy himself as to whether candidate is qualified as prescribed under Section 3 of the R.P. Act. However, if returning officer is otherwise satisfied, there seems to be no need to ask every candidate to produce the documents as provided under Section 39 (2)(c) of the R.P. Act. Parliament has used the word 'may' and not 'shall', therefore, 1st ground as taken by the election petitioner and argued by learned counsel for the petitioner does not require any adjudication on merit and fails at this stage.

18. Hon'ble Apex Court in the case of Krishna Mohini (Supra) has approved its earlier judgment in Pashupati Nath Singh (Supra) and in paragraph 47 has held as under:—

" Under sub-section (1) of Section 33 of the Act, a candidate is deemed to have been nominated only after his nomination paper complete in all respects in the prescribed form and signed by the candidate and proposer has been delivered to the returning officer between 11.00 a.m. and 3 p.m. The law has been settled in Pashupati Nath Singh vs. Harihar Prasad Singh by a three-Judge Bench that the oath or affirmation has to be taken by the candidate after he has been nominated, i.e., after he has submitted the nomination papers, but before the date of scrutiny. It follows that an oath or affirmation taken before the submission of nomination form and on or after the day of scrutiny would be invalid depriving the nomination papers of its validity."

19. No doubt oath or affirmation as required has to be taken by the candidate after he has submitted the nomination paper but before the date of scrutiny.

20. Para 15 (A), (B), (C), (E) and (F) of the Election Petition are reproduced hereinbelow:—

"15(A) That the respondent no. 1 -Sri Pradeep Balmuchu had filed his nomination paper on 23-4-2012 at 11.00 A.M. and he has also taken oath, as per the requirements of Article 84 read with third schedule of the Constitution of India, at 11.00 AM on the same date same hour same time; i.e. at 11.00 AM on 23-4-2012.

(B) The aforesaid oath ought to have been taken by the resp. No.1 after filing his nomination paper. It have been so held by the Apex Court in Krishna Mohini V/s Mohinder Nath Sofat reported at AIR 2000 SC 317-(2000) 1 SCC 145.

(C) That both the acts of filing nomination paper and taking oath were performed at 11.00 AM itself. 11.00 AM is not after 11.00 AM. Thus the Resp. No.1 has not taken oath as per the requirements of Article 84 read with third schedule of the Constitution of India. He has not taken such oath after filing of his nomination papers to the "returning Officer and as such his nomination papers ought to have been rejected by the Returning Officer.

(E) That similar is the case of Resp. No.2. He had filed his nomination paper on 23-4-2012 at 01.50 PM and he has also taken oath as per the requirements of article 84 read with third schedule of the Cons titution of India on the same day at the same time and same hour i.e., at 01.50 PM on 23-4-2012.

(F) That as the Resp. No.2, has not taken such oath after filing of his nomination papers to the Returning Officer and as such his nomination papers ought to have been rejected by the Returning Officer, as morefully stated hereinabove."

21. There is no specific pleading that the respondents have taken oath or affirmation before the submission of the nomination paper or after the scrutiny of nomination. Rather from the pleadings, it can safely be inferred that after handing over the nomination paper to the returning officer, both of them have taken oath and thereafter returning officer has made his noting thereon. Argument of Mr. Choudhary that an inference should be drawn that oath was taken prior to filing of nomination paper cannot be accepted.

22. As per the case of the petitioner, respondent no. 2 has deposited security deposit of Rs. 10,000 on 17-4-2012 while has filed his nomination paper after six days on 23-4-2012, therefore. security deposit made on 17-4-2012 was not valid. According to the learned counsel for the petitioner, as per Section 34 (2) of the R.P. Act, if candidate wants to deposit in cash, he should made deposit in cash with the Retuning Officer at the time of filing of the nomination paper and not before that Paragraph 15 (H) of the Election Petition reads as under.—

“15 (H). That in this particular case at hand the respondent no. 2 has deposited the security deposit of Rs. 10,000 on 17-4-2012 and has filed his nomination paper after six days on 23-4-2012. It is clear that he has/had not deposited the security deposit of a sum of Rs. 10,000 only in cash, with the Returning Officer at the time of filing of his nomination papers in accordance with the provision of Section 34 read with section 39 of the R.P. Act, 1951 and as such he shall not be deemed to be a duly nominated candidate and on this ground, his nomination papers ought to have been rejected by the Returning Officer at the time of scrutiny itself.”

23. From the perusal of Paragraph 15 (H), it is not made clear as to whether Rs. 10,000 were deposited in the Government Treasury or with the Returning Officer. However, it is clear that respondent no. 2 has deposited the security deposit and nomination paper was not accepted without there being any deposit.

24. In view of the discussions made hereinabove, in the opinion of this Court, there seems to be no cause of action giving rise to triable issue. The petition seems to be absolutely bogus, vexatious just to harass the winning candidates. Issuance of notice to the winning candidates would amount to asking the elected representative of the people to face the unnecessary litigation instead of discharging public duty for which the elector have reposed confidence. Consequently, the election petition is liable to be rejected by invoking Order VII Rule 11 (A) of the Code of Civil Procedure.

25. In view of the above discussions this election petition stands rejected.

Sd/-

Alok Singh . J.

[No. 82/CS-JKD/ I of 2012/2012]

By Order.

K. N. BHAR, Secy.